United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

75-7069 ORIGINAL

75-7206-8

United States Court of Appeals
FOR THE SECOND CIRCUIT

B
P/5

COMPANIA ESPANOLA DE PETROLEOS, S.A.,
Plaintiff-Appellant-Cross-Appellee,

against

NEREUS SHIPPING, S.A.,
Defendant-Appellee-Cross-Appellant.

Docket Nos. 75-7069 and 75-7208

HIDROCARBUROS y DERIVADOS, C.A.,
Plaintiff-Appellee,

against

NEREUS SHIPPING, S.A.,
Defendant-Appellant,

and

COMPANIA ESPANOLA DE PETROLEOS, S.A.,
Defendant-Appellee.

Docket No. 75-7206

In the Matter of the Arbitration

Between

HIDROCARBUROS y DERIVADOS, C.A.,
Petitioner-Appellee,

against

NEREUS SHIPPING, S.A.,
Respondent-Appellant.

Docket No. 75-7207

PETITION FOR REHEARING WITH A SUGGESTION FOR REHEARING *EN BANC*

BURKE & PARSONS
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Nereus Shipping, S.A.
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RAYMOND J. BURKE
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RAYMOND J. BURKE, JR.
Of Counsel

J

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and Rules:

PETITION FOR REHEARING *EN BANC*

Nereus Shipping, S.A., as appellant, respectfully petitions for rehearing of its appeals in the captioned cases pursuant to Rule 40 of the Federal Rules of Appellate Procedure, and pursuant to Rule 35 for consideration by this Honorable Court *en banc*.

The decision of this Court rendered on December 12, 1975 was the first decision by any United States Court of Appeals requiring consolidation of two separate arbitration proceedings governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. The separate arbitrations involved different parties and consolidation was opposed by Nereus Shipping, S.A. (hereinafter referred to as "Nereus" or "Appellant"), which had arbitration agreements with Compania Espanola De Petroleus, S.A. (hereinafter referred to as "Cepsa") and Hidrocarburos y Derivados C.A. (hereinafter referred to as "Hideca"). The decision is also unique in that it removed the entire panel of three arbitrators appointed pursuant to the arbitration agreement in the Nereus-Cepsa arbitration. Another innovation in the decision is that it established a procedure for appointing five arbitrators to conduct the consolidated arbitration, despite the fact that each of the arbitration agreements provided for a panel of three arbitrators.

As the first decision to remove an entire panel of arbitrators, the decision conflicts with prior decisions in *San Carlo Opera Co.* v. *Conley*, 163 F.2d 310 (2d Cir. 1947) and *Sanko Steamship Co. Ltd.* v. *Cook Industries Inc.*, 495 F.2d 1260 (2d Cir. 1973). The arbitration agreement between Nereus annd Cepsa did not require the intervention of the Court to institute arbitration proceedings and the decision of this Court appears to conflict with *Kentucky River Mills* v. *Jackson*, 206 F.2d 111 (6th Cir. 1953), cert. denied 346 U.S. 887; *Standard Magnesium Corp.* v. *Fuchs*, 251 F.2d 455 (10th Cir. 1957), and *A/S Ganger Rolf* v. *Zeeland Tramp Ltd.*, 191 F.Supp. 359 (S.D.N.Y. 1969). None of the foregoing decisions are referred to in Judge Medina's opinion, although the effect of the decision on maritime and other arbitrations will be most extensive. The result is to involve the courts in fashioning arbitration agreements rather than simply enforcing them in accordance with their terms.

The decision of this Court rendered on December 12, 1975 so substantially affects the rights of litigants under

the Federal Arbitration Act as to merit consideration by this Court *en banc*.

POINT I

The removal of appointed arbitrators is a departure from prior decisions.

The District Court, in its decision and order dated December 18, 1974, in what this Court refers to in its opinion as "Action No. 1", stated, in part, as follows:

> "After Nereus named an initial arbitrator and Cepsa failed to name its own arbitrator, Nereus named a second arbitrator pursuant to the above clause. Those two arbitrators then appointed a third arbitrator in accordance with the arbitration clause of the contract." (A-101)*

Pages 11 and 15 of this Court's decision state respectively, in part, as follows:

> "* * * we modify the December order by removing the three Nereus arbitrators.
>
> * * *
>
> We modify the order of December 18, 1974 so as to provide for the elimination of the three arbitrators selected by Nereus."

The panel of arbitrators were all members of the Society of Maritime Arbitrators, the third arbitrator was the President of the Society, and there has never been a suggestion that any member of the panel was not an unbiased and proper arbitrator. In *San Carlo Opera Co.* v. *Conley*, 72 F.Supp. 825, 833 (S.D.N.Y. 1946), aff'd 163 F.2d 310 (2d Cir. 1947), the Court held, in part, as follows:

> "The power of the courts, to set aside an award of a board of arbitrators, after bias or prejudice is shown, is well settled (citing authorities). But where the dispute has proceeded to arbitration, the court does not appear to have the power to order a substitution of arbitrators. In Williston, Contracts, 1923, it is observed: 'The American statutes contain no provision for vacating the office of arbitrator in the event he is shown to be biased or prejudiced during the proceeding.'"
>
> * * *

In *Sanko Steamship Co.* v. *Cook Industries, Inc.*, 495 F.2d 1260, 1264 (2d Cir. 1973), this Court held, in part, as

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* References to pages with the prefix "A" are to the Joint Appendix.

follows:

> "In such cases, a refusal by the panel to compel an allegedly partial arbitrator to step down will generally be reviewable by a district court only after an award has been made. Catz Am. Co. v. Pearl Grange Fruit Exch., 292 F.Supp. 549, 551 (S.D.N.Y. 1968); Petition of Dover S.S. Co., 143 F.Supp. 738, 742 (S.D.N.Y. 1956); San Carlo Opera Co. v. Conley, 72 F.Supp. 825, 833 (S.D.N.Y. 1946), aff'd, 163 F.2d 310 (2d Cir. 1947). But see Erving v. Virginia Squires Basketball Club, 468 F.2d 1064, 1067 (2d Cir. 1972). However, in most cases, the parties themselves will be able to compel the disqualification of arbitrators suspected of bias prior to the commencement of the proceedings. For example, under § 11 of the Maritime Arbitration Rules of the Society of Maritime Arbitrators, as under § 18 of the Rules of the American Arbitration Association, a party may have an arbitrator replaced simply by failing to waive a presumptive objection that arises if any circumstances are disclosed by the arbitrator prior to the hearing which tend to suggest bias."

Cepsa did not move in Action No. 1 for leave to appoint an arbitrator despite its failure to comply with the terms of the arbitration agreement (see *In Re Utility Oil Corp.*, 10 F.Supp. 678 (S.D.N.Y. 1934) and *Lobo & Co.* v. *Plymouth Navigation Co.*, 187 F.Supp. 859 (S.D.N.Y. 1960).

The arbitration panel was appointed in accordance with the terms of the arbitration agreement. This Court's decision is authority for the proposition that in order to consolidate two separate arbitrations, a federal court may remove an entire panel of arbitrators properly appointed pursuant to an arbitration agreement. In other cases the panel to be removed may have been appointed by the parties or by the American Arbitration Association or by a trade association. A subsequent motion for consolidation should not permit the Court to eliminate the entire panel of arbitrators and establish a new panel and procedure contrary to that agreed by the parties.

POINT II

Prior to this decision federal courts have not modified arbitration agreements or intervened to order arbitration in a manner contrary to the terms of such agreement.

This Court has held that Rules 42(a) and 81(a)(3) of the Federal Rules of Civil Procedure permit the consolidation

of arbitrations and that the remedy of consolidation "must include the essential implementation of the consolidated proceeding by molding the method of selection and the number of the arbitrators so as to fit this new situation".

This decision plainly and simply means that a Court i) need not enforce the arbitration agreement made by the parties, and ii) will become involved in fashioning a new arbitration agreement, panel and procedure. However, prior cases have held that a Court will not even compel arbitration under 9 U.S.C. § 4 where the arbitration agreement provides its own remedy for recalcitrance.

In *Kentucky River Mills* v. *Jackson*, 206 F.2d 111 (6th Cir. 1953), cert. denied 346 U.S. 887, the Court held, in part, as follows:

> "An ex parte arbitration was permissible at common law where provided for by the terms of the arbitration agreement; and, as is evident upon its face, Section 4 of the Act uses permissive language only, and does not, by its terms, require resort to the enforcement provisions thereof, if an ex parte arbitration is permitted by the terms of the arbitration agreement."

In *Standard Magnesium Corp.* v. *Fuchs*, 251 F.2d 455 (10th Cir. 1957), the Court held, in part, as follows:

> "Section 4 of the Act provides a remedy by summary proceedings in the nature of specific performance where a court order is necessary in order for the arbitration to proceed. It does not follow, however, that § 4 must be resorted to in every case where one party refuses to proceed with the arbitration. It is permissive by its terms. If the agreement provides that where one party refuses or fails to submit to arbitration, then an arbitrator may be appointed and that the arbitration may proceed ex parte, and further provides for the procedure to be followed in such an ex parte proceeding, there is no occasion to invoke the remedy of § 4. Such a remedy is necessary only in those cases where one party refuses to participate in the arbitration and a court order is necessary in order for the arbitration to proceed ex parte.
>
> * * *
>
> It is only where the arbitration may not proceed under the provisions of the contract without a court order that the other party is really aggrieved.
>
> * * *
>
> Such construction does not deny the other party an adequate remedy. * * *

> In short, he may assert in such proceedings any defense which he could have asserted in a proceeding under § 4 and any other valid defense to the award."

In *A/S Ganger Rolf* v. *Zeeland Transp. Ltd.*, 191 F.Supp. 359 (S.D.N.Y. 1969), the Court held, in part, as follows:

> "Petitioners, while conceding that they have the right under the arbitration clause to proceed ex parte, urge that they have no duty to do so and that therefore they may waive the right and elect to petition the court for relief under the Arbitration Act. The Petitioners overlook the object of the Arbitration Act which contemplates only the enforcement of the arbitration agreement made by the parties themselves, in the manner they themselves provide. Petitioners, by waiving rights and remedies given to them by the arbitration clause cannot thereby acquire a new right not granted by the Act to have the court compel arbitration in a manner different from that provided by the clause. Having designed their own remedy for recalcitrance they cannot, over respondent's objection, ignore that remedy and pursue another."

Gavlik Construction Co. v. *The Wickes Corp.*, 389 F.Supp. 551, 555 (W.D. Penn. 1975) held, in part, as follows:

> "Having determined that both Gavlik and Wickes are obliged to arbitrate their disputes with Campbell, the next question is whether consolidated arbitration is properly ordered. We hold that it is not.
>
> The court notes once again that arbitration is a matter of contract, and parties cannot be forced to arbitrate matters they have not agreed to arbitrate. John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).
>
> * * *
>
> * * * Campbell also cites Robinson v. Warner, 370 F.Supp. 828 (D.R.I. 1974), in which the court construed Rules 81(a) (3) and 42(a) of the Federal Rules of Civil Procedure to require consolidated arbitration among the contractor, the architect, and the owner. The law on this question, is not settled, however, as the Robinson court, particularly notes.
>
> We cannot accept defendant's broad reading of the arbitration provision. The agreement itself fails to specify consolidated arbitration and the provision in Article 22 that the arbitrators be chosen 'one by the contractor' and 'one by the subcontractor' (and the third by the first two), clearly implies that only those two parties were expected to participate in any arbitration. No mention is made of how an arbitration would occur involving a three-party dispute."

The decision of this Court establishing a five member arbitration panel in which Cepsa and Hideca, who have a common position concerning the question of default, each appoint one arbitrator and Nereus appoints one arbitrator is prejudicial to Appellant. In the District Court cases from this Circuit referred to in this Court's opinion, the party requesting arbitration was a party to both arbitration agreements and waived its right to appoint an arbitrator.[1]

POINT III

The decision of this Court contains errors of fact.

There are several errors of fact in the decision of Judge Medina which we believe have affected the tone, tenor and result of the decision, and have unfairly reflected criticism of attorneys for Appellant, and of the other attorneys involved in the appeals.

(1) The decision incorrectly states at page 12 as follows:

> "This brings us to the barrage of procedural motions and maneuvers by Nereus that have reduced the record before us to a state of utter confusion."

The fact is that Nereus made no procedural motions whatsoever in the District Court and no "maneuvers" other than to file affidavits in opposition to motions by Cepsa and Hideca in Actions No. 1 and No. 2 commenced by them as plaintiffs (Joint Appendix pages i to vii).[2]

The only motion made by Nereus was its motion dated January 24, 1975 in this Court to dismiss Cepsa's appeal (A-108) from the decision of Judge Stewart dated December 18, 1974 in Action No. 1. This motion was made two weeks before Hideca commenced Action No. 2 and was on the basis that "the order appealed from refusing

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[1] In *Lavino Shipping Co.* v. *Santa Cecilia Co.*, 1972 AMC 2454, 2457 (S.D.N.Y. 1972), the Court held, in part, as follows:

> "The petition to compel a consolidated arbitration is granted. Cecilia has appointed Mr. Lloyd C. Nelson as its arbitrator, and Lauro, Mr. Peter Siebel, Jr. Lavino has expressed its willingness to waive its right to appoint an arbitrator. I hereby order that the consolidated arbitration be submitted to Messrs. Nelson, Siebel and a third arbitrator to be appointed by them."

[2] The decision at page 11 also incorrectly refers to "the various procedural maneuvers by Nereus that we will discuss in due course and which have made these appeals so unnecessarily complicated and confused".

to stay by injunction arbitration under a maritime charter party was entered in an action in admiralty and is not a final or appealable order".

This Court, by order dated February 11, 1975, signed by Judges Hays, Feinberg and Holden, directed that "the question of jurisdiction should be briefed" and referred the motion to the panel hearing the appeal. However, Judge Medina's opinion is critical of the motion, and states at page 13, in part, as follows:

> "On January 24, 1975, on voluminous papers having little to do with the matter, Nereus moved in this Court to dismiss the appeal for lack of jurisdiction."

In fact, the motion consisted of a three page affidavit, and a seven page brief and, in view of the Court's order dated February 11, 1975, Judge Medina's statements that the points were "nonsense" and the appeal "frivolous" are unjustified.

(2) The decision incorrectly states at page 3:

> "So we are presented with four appeals, one cross-appeal, one motion to dismiss one appeal on written papers * * *"

In fact, there are a total of four, not five, appeals arising from three separate proceedings in the District Court.

(3) The decision incorrectly states at pages 12 and 13 as follows:

> "The main brief of Nereus refers to a cross-appeal by Nereus bearing the docket number 75-7208. The supposed notice of cross-appeal is not in the Appendix nor is it in the Supplemental Appendix. Diligent search of all the files in these actions in the Clerk's office failed to reveal any such notice of cross-appeal. What actually had happened was that counsel for Nereus had taken a copy of the Nereus notice of appeal in Action No. 2 from the order of March 21, 1975, and slipped it in the file in Action No. 1."

In fact, Judge Stewart's decision dated March 21, 1975 (A-218-222) carried the docket numbers 75 Civ. 463 and 75 Civ. 464, which on appeal became Docket Nos. 75-7206 and 75-7207. However, Judge Stewart's decision also stated as follows (A-219):

> "The facts surrounding these cases are set forth in our memorandum of December 18, 1974, in the related case of *Compania Espanola de Petroleos, S.A.* v. *Nereus Shipping, S.A.*, 74 Civ. 5102. The clerk is di-

rected to file a copy of the instant memorandum and order with the file in that case."[2]

Three notices of appeal on behalf of Nereus were properly filed in the District Court on March 26, 1975 and are contained in the Joint Appendix (A-109, A-223 and A-294). Each notice of appeal carried the proper District Court docket number and indicated on its face that the appeal was from Judge Stewart's March decision and order.

Each notice of appeal was entered in the District Court Docket for the appropriate action and was certified to the Court of Appeals (A-1, A-111 and A-229). Counsel for Nereus did not "slip" anything in any file in any clerk's office and the comment to such effect in the Court's decision is not correct, not justified and unfairly derogatory.

With respect to Docket No. 75-7208, on April 4, 1975, counsel for Nereus properly filed Form C in the Clerk's office of this Court identifying the case as 74 Civ. 5102 (i.e. Action No. 1) and the related cases as 75 Civ. 463 and 464 (i.e. Action No. 2).[3]

On April 8, 1974, this Court issued a Scheduling Order with the caption of Action No. 1 and containing the docket numbers 75-7069 (i.e. Cepsa's appeal) and 75-7208 (i.e. Nereus' appeal). Copies of Form C, the Scheduling Order and the Receipt concerning docket number 75-7208 (formerly 74 Civ. 5102) are annexed as Appendix A and demonstrate the error of the Court's comments above and the further comments on page 13 that Nereus was cross-appealing the December 18, 1974 decision in Action No. 1.

(4) Referring to Action No. 2, which was commenced by Hideca on February 7, 1975, the Court's decision at pages 11 and 12 states, in part, as follows:

"In the course of time Hideca woke up to the fact that the failure of the two arbitrators to appoint

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[3] In Form C, counsel for Nereus stated as follows:

"BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW: The arbitration panel of three arbitrators was appointed pursuant to the terms of the Arbitration Agreement between the parties which was held by the Court in its decision dated December 18, 1974 to be enforceable. In that decision the Court denied the motion by CEPSA for a preliminary injunction. The decision of the Court in 75 Civ. 463, which was ordered filed in this case, has the effect of removing the three arbitrators previously appointed and requiring arbitration before five arbitrators, two of whom will be appointed by opponent's espousing the same position."

> the third arbitrator had stalled the arbitration. They also woke up to the fact that Nereus might activate the arbitration referred to in Action No. 1."

In fact, the attorney for Hideca attended all hearings in Action No. 1 and submitted an affidavit in support of Cepsa's motion for an injunction.[4] Hideca then waited approximately 2½ months before commencing Action No. 2 seeking the same relief which was denied in Action No. 1.

(5) This Court's decision states, in part, at page 9 as follows:

> "Although the two arbitrators representing Hideca and Nereus were promptly appointed, they just could not agree on who should be the third arbitrator. This went on for months. It is inconceivable to us that this was just because these two arbitrators wanted to be polite to one another."

This comment by Judge Medina together with his comment in the preceding sentence referring to "delay by Nereus with reference to the Hideca arbitration" is unwarranted, incorrect and unfairly reflects on the motives and actions of the arbitrator appointed by Nereus.

In fact, the record indicates that the arbitrator appointed by Nereus suggested to the arbitrator appointed by Hideca six members of the Society of Maritime Arbitrators, including its past president (A-282) and the professor of admiralty at Fordham University Law School (A-246). The Rules of the Society of Maritime Arbitrators state that "No person shall serve as an Arbitrator if he has any financial or personal interest in the result nor if he has acquired detailed prior knowledge of the dispute" (A-274). Similarly, the statement at page 10 that "the entire arbitration panel consisted of Nereus men" demeans the three independent arbitrators appointed in the Nereus-Cepsa arbitration.

To suggest that there was intentional delay by the arbitrator appointed by Nereus is unwarranted by the record. Moreover, Hideca could have moved for the Court to appoint a third arbitrator at any time. There was no delay

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[4] The affidavit of Hideca's attorney dated November 27, 1974, filed in the action by Cepsa against Nereus for an injunction, 74 Civ. 5102 (A-95-98) stated, in part, as follows:

> "10. We submit that if plaintiff is obliged to arbitrate with defendant that arbitration should be stayed until the arbitration between Hideca and the defendant has been completed."

by Nereus which appointed an arbitrator prior to the appointment of an arbitrator by Hideca

(6) The language of Page 3 of the decision is demeaning and critical of all attorneys involved in the case primarily because no transcript of oral argument in chambers was kept by the District Court. The intemperate language of the entire opinion in an important decision reflects adversely upon the District Court, four law firms which regularly practice in the Federal Courts, and upon this Court.

Conclusion

We respectfully suggest that this case is an important case under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, which will have a significant impact on future maritime arbitrations, and that this decision is contrary to prior case law and to the language of the statute. We believe that the character of the decision and the comments therein are unworthy of this prestigious Court and respectfully request that Appellant's petition for a rehearing and for consideration by this Honorable Court *en banc* be granted.

Respectfully submitted,

BURKE & PARSONS
Attorneys for Appellant
Nereus Shipping, S.A.

RAYMOND J. BURKE
THOMAS A. DILLON, JR.
RAYMOND J. BURKE, JR.
Of Counsel

ADDENDUM A

FORM C

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)

(Attach additional sheets if space is not sufficient)

APPEAL FROM DISTRICT COURT

DISTRICT ▶ SOUTHERN

DISTRICT COURT DOCKET NUMBER ▶ 74 Civ. 5102 (CES)

DATE FILED IN DISTRICT COURT ▶ MO. DAY YEAR 3-25-75

DATE NOTICE OF APPEAL FILED ▶ 3-26-75

RELATED CASE(S)▶ SDNY 75 Civ. 463 (CES); SDNY 75 Civ. 464 (CES)

Is this a cross appeal: YES ☐ NO ☒

CASE TITLE (Complete)

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff-Appellee,

-against-

NEREUS SHIPPING, S.A.,

Defendant-Appellant.

COUNSEL NAME FOR APPELLANTS:	ADDRESS	TELEPHONE
Burke & Parsons	52 Wall Street New York, N.Y. 10005	344-1030
FOR APPELLEES: Poles, Tublin, Patestides, & Stratakis	46 Trinity Place New York, N.Y. 10006	797-1240

(Check One Box Only)

NATURE OF SUIT

CONTRACT	TORTS	ACTIONS UNDER STATUTES: CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS
☐ INSURANCE	PERSONAL INJURY	☐ VOTING	☐ AGRICULTURE	☐ COPYRIGHT ☐ TRADEMARK
XX MARINE	☐ AIRPLANE	☐ JOBS	☐ FOOD & DRUG	☐ PATENT
☐ MILLER ACT	☐ ASSAULT, LIBEL & SLANDER	☐ ACCOMMODATIONS	☐ LIQUOR LAWS	OTHER STATUTES
☐ NEGOTIABLE INSTRUMENT	☐ FEDERAL EMPLOYERS' LIABILITY	☐ WELFARE	☐ R.R. & TRUCK	☐ STATE RE APPORTIONMENT ☐ AGRICULTURAL ACTS
☐ RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	☐ MARINE	☐ OTHER CIVIL RIGHTS	☐ AIR LINE REGS	☐ ANTI-TRUST ☐ ECONOMIC STABILIZATION ACT
☐ OTHER CONTRACT	☐ MOTOR VEHICLE	PRISONER PETITIONS	☐ OTHER	☐ BANKRUPTCY TRUSTEE ☐
	☐ OTHER PERSONAL INJURY	☐ VACATE SENTENCE (2255)	LABOR	☐ BANKS AND BANKING ☐ ENVIRONMENTAL MATTERS
REAL PROPERTY	PERSONAL PROPERTY	☐ HABEAS CORPUS	☐ FAIR LABOR STANDARDS	☐ COMMERCE ICC RATES, ETC. ☐ CONSTITUTIONALITY OF STATE STATUTES
☐ CONDEMNATION	☐ FRAUD	☐ MANDAMUS	☐ LABOR/MGMT RELATIONS	☐ DEPORTATION
☐ FORECLOSURE	☐ OTHER PERSONAL PROPERTY DAMAGE	☐ CIVIL RIGHTS	☐ LABOR/MGMT REPORTING & DISCLOSURE ACT	☐ SELECTIVE SERVICE ☐
☐ RENT LEASE & EJECTMENT			☐ RAILWAY LABOR ACT	☐ SECURITIES COMMODITIES & EXCHANGES ☐ OTHER STATUTORY ACTIONS
☐ TORTS TO LAND			☐ OTHER LABOR LITIGATION	☐ SOCIAL SECURITY
☐ ALL OTHER REAL PROPERTY				☐ TAX SUITS

METHOD OF DISTRICT COURT DISPOSITION

Judgment before trial:
- Summary Judgment ☐
- Dismissal ☐
- Other ☐

Judgment during or after trial:
- Court trial ☐
- Jury trial ☐
- During trial ☐

Appeal from order:
- Preliminary injunction ☐
- Class action ☐
- Amend answer ☐
- Enforce settlement ☐
- Counsel fees ☐
- Stay ☐
- Other XX

Prisoner petition: Granted ☐ Denied ☐

Injunction: Granted ☐ Denied ☐

Damages: Granted ☐ Amount $ _____ Denied ☐

Other relief (specify)

APPROXIMATE SIZE OF RECORD ▶

NUMBER OF EXHIBITS ▶

HAS TRANSCRIPT BEEN MADE? YES ☐ NO XX

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW:
The arbitration panel of three arbitrators was appointed pursuant to the terms of the Arbitration Agreement between the parties which was held by the Court in its decision dated December 18, 1974 to be enforceable. In that decision the Court denied the motion by CEPSA for a preliminary injunction. The decision of the Court in 75 Civ. 463, which was ordered filed in this case, has the effect of removing the three arbitrators previously appointed and requiring arbitration before five arbitrators, two of whom will be appointed by opponent's espousing the same position.

ISSUES PROPOSED TO BE RAISED ON APPEAL:
1. Whether the Court can change the Arbitration Agreement between the parties to require arbitration before five instead of three arbitrators selected in a different manner than provided in the Agreement.
2. Whether the Court can remove three duly appointed arbitrators without cause.
3. Whether by consolidating two separate arbitrations, opponents may appoint two arbitrators and the party to both arbitration agreements appoint only one.

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box)

I ☐(1) have already ordered the transcript to be prepared OR

☐(2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

(3) No transcript as matter disposed of on motion papers.

COUNSEL'S SIGNATURE by Thomas A. Dillon

DATE 4/4/75

Addendum A

United States Court of Appeals

FOR THE

SECOND CIRCUIT

TITLE OF CASE

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff-Appellee,

v.

NEREUS SHIPPING, S.A.,

Defendant-Appellant.

CIVIL APPEAL
SCHEDULING ORDER # 3

Docket No. 75-7069
75-7208

Noting that Poles, Tublin, Patestides & Stratakis, Esqs. counsel for the appellant Compania Espanola de Petroleos, S.A. has filed a notice of appeal on January 17, 1975 and Burke and Parson, Esqs. counsel for Nereus Shipping, S.A. has filed a notice of appeal on March 26, 1975 in the Southern District of New York and a Civil Appeal Pre-Argument Statement on April 4, 1975 and Transcript Information on April 4, 1975 and being advised as to the progress of the appeal,

IT IS HEREBY ORDERED that the record on appeal be filed on or before April 25, 1975;

IT IS FURTHER ORDERED that the appellant's brief and the joint appendix be filed on or before May 15, 1975;

IT IS FURTHER ORDERED that the brief of appellee be filed on or before June 16, 1975;

IT IS FURTHER ORDERED that the argument of the appeal be ready to be heard during the week of June 30, 1975.

(Over, page 1)

Addendum A

IT IS FURTHER ORDERED that in the event of default by appellant in filing the record on appeal or the appellant's brief and the appendix by the time directed or upon default of the appellant regarding any other provision of this order, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that if the appellee fails to file a brief within the time directed by this order, such appellee shall be subjected to such sanctions as the court may be appropriate.

A. DANIEL FUSARO
Clerk

By Nathaniel Fensterstock
Nathaniel Fensterstock
Staff Counsel

Dated:
April 8, 1975

CAHP 1

Addendum A

AO Form No. 182
Form approved by
Comp. Gen., U. S.
January 8, 1953

ORIGINAL
RECEIPT FOR PAYMENT

United States Court of Appeals

FOR THE SECOND CIRCUIT

OFFICE OF THE CLERK

Received From Burke & Parsons
(NAME)

Docket 52 Wall St., NYC
(ADDRESS)

75-7208 De Petroleos V. Nereus 4-4-75
(CASE NO.) (SHORT TITLE) (DATE)

ACCOUNT	AMOUNT
Clerk's Fee for docketing case	50 00
74 Civ. 5102 below T-4577	
Miscellaneous Fees	
Certified copy of	
Copy of Opinion	
Certificate of admission	
Copy of Court Rules	
TOTAL	50 00

Clerk ☐
Deputy Clerk ☐
Cler. Asst. ☒ AC

32723

☆ U. S. GPO : 1975-508-243

Due and timely service of TWO copies
of the within PETITION FOR REHEARING is hereby
admitted this 5th day of JANUARY 1976

Sales Tuttle Caterinicchio & Stapleton E.A. 3/40

.....
Attorneys for APPELLEE CRPSA

Gordon Davidson Meloy & Welsh 408 F. 2d

OF COUNSEL TO ATTORNEYS FOR
APPELLEE HIDROCARBONS